

Message Text

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ORIGIN AF-10

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FM SECSTATE WASHDC
TO AMEMBASSY ADDIS ABABA

C O N F I D E N T I A L STATE 060318

E.O. 11652: GDS

TAGS: ABLD, AEMR, AFSP, ASEC, ET

SUBJECT: ETHIOPIAN ARMY TAKEOVER OF AMCONGEN, ASMARA

REF: A. ADDIS ABABA 1030; B. ADDIS ABABA 841

1. THE OFFICE OF LEGAL ADVISER HAS PROVIDED FOLLOWING
LEGAL OPINION ON VALIDITY OF EPMG EXPROPRIATION OF CONGEN,
ASMARA BUILDINGS:

BEGIN TEXT: THE 1953 TREATY OF AMITY AND ECONOMIC RELATIONS BETWEEN ETHIOPIA AND THE U.S., ARTICLE III, PARA 2, STATES THE PRINCIPLE OF THE INVIOABILITY OF THE CONSULAR PREMISES: "THE CONSULAR OFFICES SHALL NOT BE ENTERED BY THE POLICE OR OTHER LOCAL AUTHORITIES WITHOUT THE CONSENT OF THE CONSULAR OFFICER..." HOWEVER, THIS PRINCIPLE
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DOES NOT APPLY TO THIS CASE, BECAUSE THE BUILDINGS WERE
NOT IN USE AS CONSULAR OFFICES AT THE TIME THE EPMG
OCCUPIED THEM.

THUS, THE ISSUE RAISED MUST BE ANSWERED BY REFERENCE TO
GENERAL INTERNATIONAL LAW AND PRACTICE. WHILE ETHIOPIA
IS NOT A SIGNATORY OF THE VIENNA CONVENTION ON CONSULAR

RELATIONS OF 1963, THAT CONVENTION IS REVELANT BECAUSE IT EMBODIES INTERNATIONAL LEGAL PRACTICE. SECTION 31,

PARA 4 PROVIDES: "IF EXPROPRIATION IS NECESSARY FOR (NATIONAL DEFENSE OR PUBLIC UTILITY), ALL POSSIBLE STEPS SHALL BE TAKEN TO AVOID IMPEDING THE PERFORMANCE OF CONSULAR FUNCTIONS, AND PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION SHALL BE PAID TO THE SENDING STATE." EXPROPRIATION IS PERMITTED BY INTERNATIONAL LAW WHEN IN THE EXERCISE OF THE RIGHT OF EMINENT DOMAIN AND WHEN PROMPT AND ADEQUATE COMPENSATION IS AFFORDED. IN THIS CASE, THE BUILDINGS WERE TAKEN FOR A PUBLIC PURPOSE AS THE AMCONGEN COMPOUND APPARENTLY WILL BE USED IN CONNECTION WITH EPMG USE OF THE ADJACENT ASMARA COMMUNICATION FACILITY AND ARE CURRENTLY USED AS MILITARY HOUSING.

IN CONCLUSION, AS LONG AS PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION IS AFFORDED, THE EPMG POSITION IS LEGALLY VALID. END TEXT.

2. IN LIGHT OF THIS DECISION, WE DO NOT RPT NOT WANT TO PURSUE THE MATTER FURTHER WITH EPMG. THEIR ACTION APPEARS TO HAVE BEEN LEGAL, ALTHOUGH QUITE REGRETTABLE FROM OUR POINT OF VIEW. WHILE WE MAY EVENTUALLY HAVE TO NEGOTIATE AND ACCEPT COMPENSATION FOR THE BUILDINGS, CONFIDENTIAL

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WE DO NOT WANT TO BRING UP THE ISSUE OURSELVES. AS OUR LONG-TERM GOAL IS TO ATTEMPT TO RETAIN SOME CLAIM OF OWNERSHIP OF THE PROPERTY SO AS TO BE ABLE TO USE IT AT SOME MORE FAVORABLE TIME IN THE FUTURE, WE PREFER TO LEAVE MATTER OUTSTANDING. ACCEPTING COMPENSATION WOULD CLOSE THE BOOK ON OUR OWNERSHIP. HOWEVER, IF MATTER CAN BE DRAGGED OUT, OUR CLAIM TO OWNERSHIP MIGHT STILL BE ACTIVE AT TIME WHEN POLITICAL ATMOSPHERE IN ETHIOPIA AND/OR ERITREA MIGHT CHANGE.

3. ACCORDINGLY, YOU SHOULD NOT RAISE ISSUE WITH EPMG. IF EPMG BRINGS MATTER TO YOUR ATTENTION (PERHAPS IN CONTEXT OF WHAT TO DO WITH FURNITURE), YOU SHOULD ASK FOR COPY OF DECREE OF NATIONALIZATION, ASK ON WHAT LEGAL BASIS STEP WAS TAKEN, AND REFER MATTER TO DEPARTMENT FOR FURTHER INSTRUCTION.

4. DEPT. WOULD BE INTERESTED IN KNOWING WHETHER ITALIANS OR BRITISH HAVE HAD SIMILAR PROBLEMS. VANCE

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